



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 746

[Docket No. 220406-0085]

RIN 0694-AI81

Additions to the List of Countries Excluded from Certain License Requirements under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the Russian Federation's (Russia's) further invasion of Ukraine and to protect U.S. national security and foreign policy interests, the Department of Commerce established highly restrictive license requirements and policies for certain transactions involving Russia and Belarus under the Export Administration Regulations (EAR). To recognize partner countries implementing substantially similar export controls on Russia and Belarus, the Department of Commerce published a list of countries excluded from certain U.S. export controls related to foreign-produced items. In this rule, the Department of Commerce adds Iceland, Liechtenstein, Norway, and Switzerland to the list of excluded countries.

DATES: This rule is effective [INSERT DATE OF FILING FOR PUBLIC INSPECTION].

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-0092, Fax: (202) 482-482-3355, E-mail: rpd2@bis.doc.gov. For emails, include "Russia" in the subject line.

SUPPLEMENTARY INFORMATION:

Background

In response to Russia’s February 2022 invasion of Ukraine and Belarus’s substantial enabling of Russia’s invasion, the Bureau of Industry and Security (BIS) imposed extensive export controls on Russia and Belarus under the Export Administration Regulations (15 CFR parts 730 – 774) (EAR) by implementing the final rule, *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)*, effective February 24, 2022 (“Russia rule”),¹ and four subsequent final rules published in March 2022: *Imposition of Sanctions Against Belarus Under the Export Administration Regulations (EAR)*, effective March 2, 2022 (“Belarus rule”);² *Expansion of Sanctions Against the Russian Industry Sector Under the Export Administration Regulations (EAR)* (“Industry Sector rule”);³ *Further Imposition of Sanctions Against Russia with the Addition of Certain Entities to the Entity List* (“Russia Entity List rule”);⁴ and *Imposition of Sanctions on ‘Luxury Goods’ Destined for Russia and Belarus and for Russian and Belarusian Oligarchs and Malign Actors Under the Export Administration Regulations* (“Luxury Goods rule”).⁵ As described in the Russia rule’s preamble, as well as in the other March 2022 rules, Russia’s invasion of Ukraine and Belarus’s enabling of such invasion flagrantly violate international law, are contrary to U.S. national security and foreign policy interests, and undermine global order, peace, and security. Accordingly, BIS has imposed stringent export controls on Russia and Belarus.

¹ 87 FR 12226 (March 3, 2022).

² 87 FR 13048 (March 8, 2022).

³ 87 FR 12856 (March 8, 2022).

⁴ 87 FR 13141 (March 9, 2022).

⁵ 87 FR 14785 (March 16, 2022).

Also in March 2022, BIS published *Addition to the List of Countries Excluded from Certain License Requirements under the Export Administration Regulations* (“South Korea exclusion rule”),⁶ which added South Korea to the list of countries in supplement no. 3 to part 746 of the EAR that are excluded from certain § 746.8 license requirements that pertain to items destined for Russia or Belarus. The countries listed in supplement no. 3 to part 746 have committed to implementing substantially similar export controls on Belarus and Russia under their domestic laws. Pursuant to §746.8(a)(5) of the EAR, countries that have made such a commitment receive full or partial exclusions, as appropriate, from the FDP rules’ license requirements set forth under §746.8(a)(2) and (3). Similarly, the license requirements in §746.8(a)(1) are not used to determine controlled U.S.-content under the EAR’s *de minimis* rules, as set forth in supplement no. 2 to part 734 of the EAR, provided the criteria in §746.8(a)(5)(i) and (ii) are met.

Iceland, Liechtenstein, Norway, and Switzerland have adopted and implemented substantially similar measures to those imposed by BIS through U.S. export controls on Russia and Belarus. In recognition of their substantial alignment with U.S. controls, BIS adds the four countries to supplement no. 3 to part 746 in this rule with the designation of “full.”

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

⁶ 87 FR 13627 (March 10, 2022).

1. This final rule is not a “significant regulatory action” because it “pertain[s]” to a “military or foreign affairs function of the United States” under sec. 3(d)(2) of Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of information subject to the PRA: 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694-0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute; and 0607-0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission. BIS anticipates this rule will result in a slight decrease in the number of estimated license applications because this rule provides relief from the burden of the new Russia rule and Belarus rule requirements that would otherwise pertain to items produced in, exported or reexported from Iceland, Liechtenstein, Norway, or Switzerland, or transferred (in-country) in either country. Thus, this rule does not create a substantive change to OMB Control Numbers 0694-0088, 0694-0096, or 0607-0152.
3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.
4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5. U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 746 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 746 – EMBARGOES AND OTHER SPECIAL CONTROLS

1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007-7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2021, 86 FR 26793 (May 10, 2021).

2. Supplement no. 3 to part 746 is amended by adding entries for “Iceland,” “Liechtenstein,” “Norway,” and “Switzerland” to the table in alphabetical order to read as follows:

Supplement No. 3 to Part 746 – Countries Excluded From Certain License Requirements of

§ 746.8

Country	Scope	Federal Register Citation
*	* * *	* * *
Iceland	Full	87 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]
* *	* * *	* *
Liechtenstein	Full	87 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]
* *	* * *	* *
Norway	Full	87 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]
* *	* * *	* *
Switzerland	Full	87 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022-07836 Filed: 4/8/2022 8:45 am; Publication Date: 4/12/2022]